

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOM JON RILURCASA,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

) Case No.: 1:20-cv-01568-NONE-SAB (PC)
)
)
) FINDINGS AND RECOMMENDATIONS
) RECOMMENDING DISMISSAL OF CERTAIN
) CLAIMS AND DEFENDANTS FOR FAILURE TO
) STATE A COGNIZABLE CLAIM
)
) (ECF No. 21)
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Plaintiff Tom Jon Rilurcasa is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's second amended complaint, filed July 16, 2021.

I.

SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do
4 not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550
5 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated
6 in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

7 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings liberally
8 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th
9 Cir. 2012) (citations omitted). To survive screening, Plaintiff's claims must be facially plausible, which
10 requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is
11 liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
12 969 (9th Cir. 2009). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and
13 "facts that are 'merely consistent with' a defendant's liability" falls short of satisfying the plausibility
14 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

II.

SUMMARY OF ALLEGATIONS

17 Plaintiff names Warden Stu Sherman, Doctor Ryan Kim, Doctor Bernard Brown, Doctor
18 Martin Laufik, Doctor Bruce Troup, Doctor Griffith Eleonor, Physician Assistant Mbadugha Chika,
19 Physician Assistant Oberst David, Registered Nurse Angela Ratliff, Registered Nurse Fajardo Grace,
20 Registered Nurse Roberts Danyelle, Physical Therapist Moreno Estere, HCGOR S. Gome, HCARN D.
21 Roberts, CEO C. Cryer and Chief HCCAB S. Gates, as Defendants.

22 "It is the responsibility of CDCR to promote the utilization advance directives to determine
23 plaintiff's health care preferences, including, but not limited to decisions regarding plaintiff's
24 medication and surgeries on his knee and shoulder. However, plaintiff was never informed of his right
25 to say in his medical care by co[rr]ections staff, medical staff or an ASL interpreter." (Sec. Am.

1 Compl. at 5.)¹ “PCP failed to properly schedule plaintiff with a high priority care within fourteen
2 days. Instead, plaintiff was schedule routine care within 90, 180 days, which caused plaintiff[’]s first
3 surgery on his knee to be put off for over two years, and he is still waiting for his second surgery on
4 his shoulder.” (Id.) “Plaintiff was also refused specialized health care housing in the he [sic] was
5 refused a lower bunk/lower tier which cause more damage to plaintiff[’]s knee and shoulder.” (Id. at
6 6.)

7 “[I]t is the responsibility of all CDCR to make sure that of [sic] deaf inmates has effective
8 communication when there is an exchange of health care information with the health care provider or
9 in health care grievances, with the help of an American sign language interpreter. It is plaintiff’s
10 statements when he seen doctors, and nurse them [sic] would refuse from time to time to provide him
11 with an ASL interpreter.” (Id. at 6-7.)

12 “[D]efendants did not provide proper medical care made [sic] plaintiff wait two years to
13 receive surgery, and more damage to his knee and shoulder. This shows that, et al, all named
14 defendants that is prison officials, et al, were want only [sic] deliberately indifferent to plaintiff[’]s
15 serious medical need causing him substantial harm to his health.” (Sec. Am. Compl. at 13-14.)

16 **III.**

17 **DISCUSSION**

18 **A. Deliberate Indifference to Serious Medical Need**

19 The Eighth Amendment’s prohibition against cruel and unusual punishment protects convicted
20 prisoners. Bell v. Wolfish, 441 U.S. 520, 535 (1979); Graham v. Connor, 490 U.S. 386, 395 n.10 (1989).
21 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing,
22 sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000)
23 (quotation marks and citations omitted), but not every injury that a prisoner sustains while in prison
24 represents a constitutional violation, Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th 2006). (quotation
25 marks omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials

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¹ References herein to page numbers are to the Court’s ECF pagination headers.
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were deliberately indifferent to a substantial risk of harm to her health or safety. Farmer v. Brennan, 511 U.S. 825, 847 (1994); Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). A deliberate indifference claim has both a subjective and an objective element. Helling v. McKinney, 509 U.S. 25, 35 (1993); Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014) (quoting Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014)); Lopez v. Smith, 203 F.3d 1122, 1133 (9th Cir. 2000); Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004). Mere negligence on the part of a prison official is not sufficient to establish liability, but rather, the official's conduct must have been wanton. Farmer, 511 U.S. at 83; Frost, 152 F.3d at 1128.

To meet the objective element of the deliberate indifference standard, a plaintiff must demonstrate the existence of a serious risk to his health or safety. Helling, 509 U.S. at 35; Colwell, 763 F.3d at 1066. A prison official is deliberately indifferent under the subjective element of the test only if the official "knows of and disregards an excessive risk to inmate health and safety." Colwell, 763 F.3d at 1066. The subjective component requires the plaintiff to show that the official knew of and disregarded the substantial risk of harm. Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002.) Deliberate indifference requires more than just a lack of due care, the prison official must be both aware of the facts from which an inference can be drawn that the substantial risk of serious harm exists and he must also draw the inference. Colwell, 763 F.3d at 1066. The subjective element focuses on the defendant's state of mind. Toguchi, 391 F.3d at 1057.

Plaintiff's medical claim concerns the alleged delay in receiving surgery ordered on his right shoulder and right knee.

With regard to Defendants Ryan Kim, Bernard Brown, Martin Laufik, Bruce Troup, Griffith Eleonor, Mbadugha Chika, and Oberst David, Plaintiff alleges that he/she "is responsible for all medical decisions that the defendant makes for all I/M's under defendant care. Defendant reviewed plaintiff Rilurcasa Tom Jon's medical records, and after review in plaintiff's medical records, the defendant did willingly show deliberate indifference to plaintiff's serious medical need in that the defendant ignored plaintiff's medical record that clearly showed that plaintiff's knee and shoulder

1 were damaged and plaintiff was still is in serious pain. In addition, because of the defendant's in
2 action [sic] it caused further damaged [sic] to the plaintiff's injuries in plaintiff's right knee and right
3 shoulder." (Sec. Am. Compl. at 19-45.) In addition, Defendants did not provide Plaintiff with pain
4 medication or surgery for his right knee and right shoulder. (Id.)

5 With regard to Defendant Ratliff Angela, Plaintiff alleges that she is "responsible for all
6 medical decision that the defendant made for all I/M's under the defendant's medical care. The
7 defendant reviewed plaintiff Rilurcasa medical file after doing examination and after nothing [sic] the
8 damage to plaintiff's right knee and right shoulder, the defendant did willfully show deliberate
9 in[]difference to plaintiff's serious medical needs." (Sec. Am. Compl. at 45.) Defendant "refused to
10 properly treat the damage to plaintiff's right knee and right shoulder which has left the plaintiff in
11 serious pain for many months now." (Id.) In addition, Defendant did not provide Plaintiff with pain
12 medication or surgery for his right knee and right shoulder. (Id. at 48.)

13 With regard to Defendants Fajardo Grace and Roberts Danyelle, Plaintiff alleges he/she "is
14 responsible for all medical decisions that the defendant made for all I/M's under the defendant's
15 medical care. The defendant reviewed plaintiff Rilurcasa medical file after doing examination and
16 after not[]ing the damage to plaintiff's right knee and right shoulder, the defendant did willfully show
17 deliberate in[]difference to plaintiff's serious medical need. In that the defendant plaintiff [sic] and his
18 medical records and refused to properly treat the damage to plaintiff's right knee and right shoulder
19 which has left the plaintiff in serious pain for many months now. Furthermore, because of the
20 defendant in action [sic], it caused further damage to the plaintiff's right knee and right shoulder. . ." (Sec. Am. Compl. at 49-54.) In addition, Defendants did not provide Plaintiff with pain medication or
21 surgery for his right knee and right shoulder. (Id. at 52, 56.)

22 With regard to Defendants Moreno Estere, S. Gome, and D. Roberts, Plaintiff alleges that
23 he/she "is responsible for the physical therapist of all I/M's under her care. The defendant reviewed
24 plaintiff's medical rile and question plaintiff about how much pain plaintiff was in. Plaintiff told
25 defendant repeatedly that plaintiff did not want to work out because plaintiff's right knee and right
26 shoulder were in causing [sic] plaintiff a lot of pain, but the defendant kept telling him to work out
27 anyway. The defendant actions showed willfully deliberate in[]difference to plaintiff's serious
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1 medical need. In the defendant [sic], forced plaintiff to work out even though it was causing plaintiff
2 pain caused further damage to plaintiff's right knee and right shoulder." (Sec. Am. Compl. at 57-68.)
3 In addition, Defendants failed to provide Plaintiff with pain medical or surgery for his right knee and
4 right shoulder. (Id. at 59, 63, 67.)

5 With regard to Defendant C. Cryer and S. Gates, Plaintiff alleges he/she "is responsible for all
6 the medical appeals under his/her preview, and all I/M's under his/her care. [Defendants] reviewed
7 plaintiff's medical file and appeal. Thus, the [Defendants] knew all the case factors regarding
8 plaintiff's serious medical condition and his need for immediate medical care, but [Defendants]
9 willfully refused to make an appellant ruling that would give plaintiff the opportunity to be properly
10 treated. Thus, [Defendants] inaction showed willfully [sic] deliberate indifference to plaintiff's
11 serious medical need. Causing plaintiff undo pain and suffering, causing further damage to plaintiff's
12 right knee and right shoulder." (Id. at 68-72.)

13 There are insufficient factual allegations to demonstrate how or why any of the named
14 Defendants acted with deliberate indifference to his medical needs. Plaintiff's allegations are
15 conclusory in nature and devoid of factual details to each Defendants' actions and/or inactions.
16 Plaintiff has simply failed to demonstrate that any Defendant denied Plaintiff's treatment or acted with
17 a culpable mental state. While Plaintiff alleges he was denied pain medication and/or surgery, he fails
18 to demonstrate that any Defendants made a conscious decision in disregard to a substantial risk to his
19 medical condition. In denying Plaintiff's health care appeal, it was specifically noted that Plaintiff
20 was "seen on July 18, 2019, by [his] primary care provider[.] Documentation states the referral to
21 orthopedics was denied and did not meet InterQual criteria."² (Id. at 94.) Plaintiff was issued a knee
22 brace and referred to physical therapy for evaluation and treatment. (Id.) Plaintiff was also advised to
23 use his crutches, and it was noted that after physical therapy he would be further evaluated by his
24 primary care provider. (Id.) A physician's adherence to CDCR health care services policy is

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26 ² InterQual is a computer program which the CDCR uses to determine whether a patient meets certain objective medical
27 criteria for a requested service. See Miller v. California Dep't of Corr. & Rehab., No. 16-CV-02431-EMC, 2018 WL
28 534306, at *12 (N.D. Cal. Jan. 24, 2018); see also Griffin v. Do-Williams, No. 2:16-cv-01435 WBS CKD P, 2019 WL
3975358, at *8 (E.D. Cal. Aug. 22, 2019) ("InterQual criteria are a library of evidence-based clinical decision support
criteria used to assess the medical necessity of a proposed treatment.").

1 insufficient to state a cognizable deliberate indifference claim. Plaintiff has not alleged facts that, if
2 true, would show that any Defendant's denial of a referral to orthopedics was medically unacceptable
3 and chosen in conscious disregard of an excessive risk to his health. Plaintiff's allegations as to
4 professional judgment address a disagreement between him and the medical providers as to the
5 treatment that should have been provided which is insufficient to state a claim. Sanchez v. Vild, 891
6 F.2d 240, 242 (9th Cir. 1989). The issue is whether the defendants were aware of his alleged need for
7 surgery and failed to adequately respond. Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012).
8 Therefore, Plaintiff cannot state a claim based on the alleged adherence to the InterQual criteria or his
9 disagreement with the medical professionals as to the treatment provided. Accordingly, Plaintiff fails
10 to state a cognizable claim for deliberate indifference.

11 **B. Equal Protection Violation**

12 In the second amended complaint and for the first time in this action, Plaintiff contends that he
13 is "deaf and needs an American Sign Language Interpreter as his primary form of communication to
14 understand [Defendants]. However, [Defendants] went out of their way to refuse plaintiff a ASL
15 Interpreter. Thus, denying plaintiff his rights under the Americans with Disabilities Act [and] Equal
16 Protection [Clause]...." (Sec. Am. Compl. at 19, 20, 23, 27, 31, 34, 38, 42, 46, 50, 53, 54, 57, 61, 65,
17 69, 72, 73.)

18 The Equal Protection Clause requires that persons who are similarly situated be treated alike.
19 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Hartmann v. California
20 Dep't of Corr. & Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v. Sullivan, 705 F.3d 1021,
21 1030 (9th Cir. 2013); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). To state a claim, Plaintiff
22 must show that Defendants intentionally discriminated against him based on his membership in a
23 protected class. Hartmann, 707 F.3d at 1123; Furnace, 705 F.3d at 1030; Serrano v. Francis, 345 F.3d
24 1071, 1082 (9th Cir. 2003); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001).

25 Plaintiff makes no allegations that he was treated differently because he was deaf or that any
26 policy or law separately classified him on the basis that he was deaf. Rather, Plaintiff's contention is
27 that the prison failed to accommodate him—a right created by the ADA and Rehabilitation Act, not
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1 the Equal Protection Clause. See Vinson, 288 F.3d at 1156. Plaintiff identifies no law or policy that
2 treated him differently because he was deaf. Plaintiff's § 1983 equal protection claim.

3 **C. Americans with Disabilities Act Violation**

4 Title II of the ADA, which "prohibits a 'public entity' from discriminating against a 'qualified
5 individual with a disability' on account of that individual's disability, covers inmates in state prisons."
6 Pennsylvania Dep't of Corr. v. Yeskey, 524 U.S. 206, 208 (1998) (citation omitted); see Castle v.
7 Eurofresh, Inc., 731 F.3d 901, 910 (9th Cir. 2013) ("Title II applies to the operation of state prisons.");
8 see also Pierce v. Cnty. of Orange, 526 F.3d 1190, 1214 (9th Cir. 2008) ("It is undisputed that Title II
9 applies to [county] jails' services, programs, and activities for detainees."). To achieve compliance
10 with the Act, "Title II authorizes suits by private citizens for money damages against public entities
11 that violate § 12132." United States v. Georgia, 546 U.S. 151, 154 (2006) (citing 42 U.S.C. § 12133).

12 Section 12132 provides: "no qualified individual with a disability shall, by reason of such
13 disability, be excluded from participation in or be denied the benefits of the services, programs, or
14 activities of a public entity, or be subjected to discrimination by any such entity." To state a claim
15 under Title II, a plaintiff must allege:

16 he is an individual with a disability; (2) he is otherwise qualified to participate in or
17 receive the benefit of some public entity's services, programs, or activities; (3) he
18 was either excluded from participation in or denied the benefits of the public
19 entity's services, programs, or activities, or was otherwise discriminated against by
the public entity; and (4) such exclusion, denial of benefits, or discrimination was
by reason of his disability.

20 Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1021 (9th Cir. 2010) (citation and brackets omitted).

21 A person is "disabled" under the ADA if he or she has "a physical or mental impairment that
22 substantially limits one or more major life activities of such individual; ... a record of such an
23 impairment; or ... [is] regarded as having such an impairment." 42 U.S.C. § 12102(1). Major life
24 activities include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping,
25 walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,
26 communicating, and working." Id. § 12102(2)(A). Major life activities also include the operation of
27 major bodily functions, such as "functions of the immune system, normal cell growth, digestive,
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1 bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”
2 Id. § 12102(2)(B).

3 A “qualified individual with a disability” under Title II is anyone with a disability who, “with
4 or without reasonable modifications to rules, policies, or practices, the removal of architectural,
5 communication, or transportation barriers, or the provision of auxiliary aids and services, meets the
6 essential eligibility requirements for the receipt of services or the participation in programs or
7 activities provided by a public entity.” 42 U.S.C. § 12131(2). This definition, which does not require
8 “voluntary” participation in the public entity’s services or programs, applies to state prisoners and
9 county jail detainees. Yeskey, 524 U.S. at 211; Pierce, 526 F.3d at 1214-15.

10 “[T]he ADA entitles inmates to receive the ‘benefits’ of the incarcerating institution’s
11 programs and services without facing discrimination on account of a disability.” Armstrong v.
12 Schwarzenegger, 622 F.3d 1058, 1068 (9th Cir. 2010). Such benefits may include the right to
13 participate in or receive a prison’s “recreational ‘activities,’ medical ‘services,’ and educational and
14 vocational ‘programs.’ ” Yeskey, 524 U.S. at 210. The Ninth Circuit has found that the “denial of
15 mobility-assistance devices to persons unable to physically function without them, the denial of
16 hearing devices to deaf [inmates], and the denial of accessibility devices, such as tapping canes, to
17 blind [inmates]” may violate Title II where the deprivations force disabled prisoners “into the
18 vulnerable position of being dependent on other inmates to enable them to obtain basic services, such
19 as meals, mail, showers, and toilets.” Armstrong v. Brown, 732 F.3d 955, 960 (9th Cir. 2013); see also
20 Bogovich v. Sandoval, 189 F.3d 999, 1002 (9th Cir. 1999) (“Ordinarily, state prisoners’ ADA claims
21 relate to issues such as the denial of access to prison facilities, denial of satisfactory medical attention,
22 denial of sign language interpretation services, or denial of the opportunity to participate in
23 educational, vocational, or rehabilitation programs.”).

24 The proper defendant in an ADA action is the public entity responsible for the alleged
25 discrimination. United States v. Georgia, 546 U.S. 151, 153 (2006). State correctional facilities are
26 “public entities” within the meaning of the ADA. See 42 U.S.C. § 12131(1)(A) & (B); Penn. Dept. of
27 Corrs. v. Yeskey, 524 U.S. 206, 210 (1998); Armstrong v. Wilson, 124 F.3d 1019, 1025 (9th Cir.
28 1997). However, a state official sued in her official capacity is, in effect, a suit against the government

1 entity and is an appropriate defendant in an ADA action. See Applegate v. CCI, No. 1:16-cv-1343
2 MJS (PC), 2016 WL 7491635, at *5 (E.D. Cal. Dec. 29, 2016) (citing Miranda B. v. Kitzhaber, 328
3 F.3d 1181, 1187-88 (9th Cir. 2003); Kentucky v. Graham, 473 U.S. 159, 165 (1985)). A plaintiff also
4 cannot assert a claim under section 1983 against Defendants in their individual capacities to vindicate
5 rights created by the ADA and the RA. See Vinson v. Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002).

6 Here, Plaintiff's claim that he was denied a sign language interpreter at various medical
7 appointments is sufficient, at the pleading stage, to state a cognizable claim under the ADA against
8 Warden Stu Sherman in his official capacity.

9 **D. California Code of Regulation Violations**

10 To the extent that Plaintiff seeks to bring claims based on a purported violation of Title 15,
11 there is no independent cause of action for a violation of Title 15 regulations. See, e.g., Parra v.
12 Hernandez, No. 08cv0191-H (CAB), 2009 WL 3818376, at *3 (S.D. Cal. Nov. 13, 2009) (granting
13 motion to dismiss prisoner's claims brought pursuant to Title 15 of the California Code of
14 Regulations); Chappell v. Newbarth, No. 1:16-cv-01378-OWW-WMW (PC), 2009 WL 1211372, at
15 *9 (E.D. Cal. May 1, 2009) (holding that there is no private right of action under Title 15 of the
16 California Code of Regulations). Similarly, there is no liability under § 1983 for violating prison
17 policy. Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009).

18 **IV.**

19 **CONCLUSION AND RECOMMENDATIONS**

20 Based on the foregoing, the Court finds that Plaintiff has stated a cognizable ADA claim
21 against Defendant Warden Stu Sherman only in his official capacity. However, Plaintiff has failed to
22 state any other cognizable claims. In light of the fact that Plaintiff has twice been given leave to
23 amend, the Court finds that further leave to amend would be futile and the first amended complaint
24 should be dismissed without leave to amend. Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013)
25 (“A district court may deny leave to amend when amendment would be futile.”).

26 Accordingly, it is HEREBY RECOMMENDED that:

27 1. This action proceed on Plaintiff's ADA claim against Defendant Warden Stu Sherman
28 in his official capacity; and

1 2. All other claims and Defendants be dismissed from the action for failure to state a
2 cognizable claim for relief.

3 These Findings and Recommendations will be submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
5 after being served with these Findings and Recommendations, Plaintiff may file written objections
6 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
7 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
8 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
9 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: **October 12, 2021**

Emily A. Bae
UNITED STATES MAGISTRATE JUDGE